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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/790,179

03/02/2004

Jean-Louis H. Gueret

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3236

22852

7590

03/17/2009

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EXAMINER

THOMAS, DAVID B

ART UNIT

PAPER NUMBER

3723

MAIL DATE

DELIVERY MODE

03/17/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/790,179	<b>Applicant(s)</b> GUERET, JEAN-LOUIS H.	
	<b>Examiner</b> David B. Thomas	<b>Art Unit</b> 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### ***Allowable Subject Matter***

1. Prosecution on the merits of this application is reopened on claims 1-68 considered unpatentable for the reasons indicated below:

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7, 8, 13, 14, 16, 17, 18, 21, 23, 27-32, 34-36, 39, 40, 42, 47-49, 51-53, 56, 58, and 62-67 are rejected under 35 U.S.C. 102(b) as being anticipated by Lhuisset (WO 009619930 A1).

Lhuisset discloses, *inter alia*, a brush having an operative portion consisting of a tube (6) split along at least one axis and containing at least one insert (8) surrounded by flexible filaments (9), i.e. "at least one bundle of bristles associated with the support (12, 13)...defining a first row of bristles extending substantially in a longitudinal direction, the bundle being split into at least two sub-bundles extending away from the end portion", held in place by means of a sleeve (10), and the free ends of the filaments project out of the slit (7) in the tube (6) to form the brush bristles (3). The brush enables the application of mascara onto eyelashes.

4. Claims 1-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Iaia et al. (EPO 0458496 A1).

laia et al. disclose, *inter alia*, a cosmetic applicator is provided having a brush with radially adjustable length bristles. The applicator includes a brush head 1, a shaft 4 and a sleeve 6. The brush head 1 has an elongated brush stem 2, i.e. "at least one bundle of bristles", with a plurality of bristle tufts 3, i.e. "sub-bundles", circumferentially attached radiating outwardly therefrom. A plurality of slots 7 are provided in an end of the sleeve 6 through which the bristle tufts 3 are forced to protrude. The brush head 1 and shaft 4 to which the latter is attached are held within the sleeve 6. Upon rotation, the bristle tufts 3 can wind or unwind, depending upon direction of rotation, around the brush stem 2. In this manner, the effective outward radial length of each bristle tuft 3 can be rendered adjustable.

### ***Conclusion***

5. The remaining prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David B. Thomas whose telephone number is (571) 272-4497. The examiner's e-mail address is: [dave.thomas@uspto.gov](mailto:dave.thomas@uspto.gov). The examiner can normally be reached on Mon-Fri 10am-7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David B. Thomas/  
Primary Examiner, Art Unit 3723

dbt